(3)

3522/06

Filed on 21/8/06

by Sh Vijay Kumar Saraf Advocate

21/8/06

(D. R. (J))

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Single Bench

Criminal Miscellaneous Petition No. 113 of 2006

PETITION UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973

PETITIONERS:

1. Gopinath Saraf,
S/o Late Laxmi Prasad Saraf,
Aged about 60 years.

2. Alok Kumar Saraf,
S/o Gopinath Saraf,
Aged about 33 years.

Both residents of Gondpara, Police Station: City Kotwali, Tehsil and District: Bilaspur, Chhattisgarh.

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RESPONDENT:

State of Chhattisgarh,
Through the Station House Officer,
Police Station: City Kotwali,
Bilaspur, Chhattisgarh.

(28)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.M.P. 113/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.02.2007

Shri V.C. Ottalwar, Counsel for the petitioners.

Shri G.K. Beriwal, Dy. Advocate General for the State.

Heard on admission.

This petition is directed against the order dated 27.7.2006 passed in Criminal Revision No.192/2005 by the IXth Additional Sessions Judge (FTC), Bilaspur. The aforesaid Criminal Revision was filed against the order dated 29.7.2005 passed in Criminal Case No.495/2004 by the Judicial Magistrate First Class, Bilaspur.

It appears that by the order dated 29/7/2005, the learned Magistrate has framed charges under Sections 448, 294 and 392 of IPC against the petitioners. This order was challenged in revision by the petitioners, but the Revisional Court denied interfering with the order, confirming the framing of charges by the Magistrate under the aforementioned Sections of IPC.

Learned counsel for the petitioners submits that the charges under Section 392 were framed on the basis of 161 statement of Nitin Soni, which was recorded on 17/12/2000. His submission is that Nitin Soni had died during the pendency of the Criminal Case; therefore, the charges framed on the basis of his statement under Section 161 Cr.P.C. should be quashed, because, ultimately, nobody would be there to prove the aforesaid charges, which are framed on his evidence.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.M.P. 113/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

This contention raised by learned counsel for the petitioners cannot be entertained on the ground that if one of the witness of the prosecution, may be the star witness, dies during the pendency of the criminal case, the charges framed against the accused persons, on the basis of evidence of that witness, cannot be quashed, because the prosecution is always at liberty to prove its case on the basis of entire evidence collected by it. If the prosecution will not be able to prove its case beyond reasonable doubt on the basis of evidence produced by it, then, the accused persons may be acquitted, but only on the basis that one of the witness had died during the pendency of the criminal case, there cannot be discharge of the accused from a case.

Moreover, if we look into the evidence of this witness – Nitin Soni, it would appear that he has stated in the following manner :

> ".....गोपी मेरे गल्ला में हाथ डालकर उसमें रखे नगदी रकम 40,000/– रूपये जिसमें 100–1000 के नोट थे निकाल लिया तथा जेब से करीब 3000/– रूपये निकाल लिया जेब में कोन – 2 सा नोट था मुझे नहीं मालूम..... "
>
> "..... मेरे गले की चेन एवं अंगूठी निकाल लिया..... "

I do not find any reason to interfere with the orders passed by the two Courts below.

The petition has no merit and the same is dismissed at the motion stage itself.

Sd/-
SUNIL KUMAR SINHA
Judge

P.T.O.